

IN THE UNITED STATES DISTRICT COURT
FOR THE
TERRITORY OF GUAM

UNITED STATES OF AMERICA,
Plaintiff,

vs.

JOHN V. CRUZ,
Defendant.

CRIMINAL CASE NO. 05-00053-003

DECLARATION IN SUPPORT OF PETITION

Re: Violation Report, Request for a Summons

I, U.S. Probation Officer Specialist Carmen D. O'Mallan, am the U.S. Probation Officer assigned to supervise the Court-ordered conditions of pretrial for John V. Cruz, and in that capacity declare as follows:

On June 24, 2005, the defendant made an initial appearance before Magistrate Judge Joaquin V. E. Manibusan, Jr. on a multi-count Indictment charging him with Conspiracy to Distribute Methamphetamine Hydrochloride, in violation of 21 U.S.C. § § 841(a)(1), (b)(1)(A)(viii), and 846; and Attempted Possession of Methamphetamine Hydrochloride with Intent to Distribute, in violation of 21 U.S.C. § § 841(a)(1), (b)(1)(A)(viii), and 846. He was charged along with co-conspirators Christopher M. Espinosa, Eric M. Aponik, and Jarett J. Elm. The defendant was released on June 24, 2005 on a personal recognizance with conditions. He is alleged to have violated the following condition:

Special Condition: *The defendant shall submit to any method of testing required by the pretrial services office or the supervising officer for determining whether the defendant is using a prohibited substance. Such methods may be used with random frequency and include urine testing, the wearing of a wrist patch, a remote alcohol testing system, and/or any form of prohibited substance screening at testing.*

On January 7, 16, and 20, 2006, Mr. Cruz failed to show for urinalyses. On January 20, 2006, in a telephonic conversation with Mr. Cruz, he stated that he had medical excuses for his failure to show for urinalyses on January 7 and 16, 2006. He failed to produce the excuses as instructed. Mr. Cruz subsequently failed to show for urinalysis later that day on January 20, 2006.

Special Condition: *The defendant shall report to the probation officer as directed. Mr. Cruz failed to file a monthly supervision report in January 2006, and failed to report to the probation officer on January 9, 2006 as scheduled. He was initially scheduled to report in*

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person on January 5, 2006, but called on that date to reschedule his appointment stating that he was sick with the flu. On January 9, 2006, his girlfriend, Tilda, contacted this officer and stated that Mr. Cruz started a new job with a construction company located in Merizo and would not be able to keep his appointment. On January 20, 2006, follow-up contact was again made with Mr. Cruz regarding his failure to report as instructed and failure to produce medical excuses for his urinalyses "no shows". He agreed to come in with the excuses on January 23, 2006. On January 23, 2006, Mr. Cruz left a voice message stating that he would be late for his appointment as his car had overheated. Mr. Cruz failed to keep his appointment.

Mr. Cruz has been returned to the start of the drug testing program as a result of his noncompliance with the program. He has had "no shows" for urinalyses in the past, but was able to provide medical excuses for the absences. This officer has not been able to determine if Mr Cruz is employed as he has not maintained contact with this officer as instructed.

Recommendation: The Probation Officer respectfully requests that pursuant to 18 U.S.C. §3148, this matter be scheduled for a hearing and a summons be issued for the defendant's appearance at that hearing to determine if his bail should be revoked or modified.

I declare, under penalty of perjury, that the foregoing is true and correct, except those matters stated upon information and belief, and as to those matters, I believe them to be true.

Executed this 6 day of February 2006, at Hagatna, Guam, in conformance with the provisions of 28 U.S.C. § 1746.

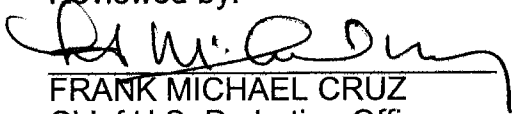
Respectfully submitted,

FRANK MICHAEL CRUZ
Chief U.S. Probation Officer

By: 

CARMEN D. O'MALLAN
U.S. Probation Officer Specialist

Reviewed by:


FRANK MICHAEL CRUZ
Chief U.S. Probation Officer

cc: Russell C. Stoddard, Assistant U.S. Attorney
Joaquin C. Arriola, Jr. Defense Attorney
File